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IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

Applicant: Jack Wasserman

Art Unit: 3621

Application No.: 10/678,871

Examiner: Not Yet Known

Filed: October 3, 2003

For: **METHOD AND SYSTEM FOR OBTAINING AND FINANCING
EXCLUSIVE REAL ESTATE LISTINGS**

Date: June 3, 2004

**STATEMENT REGARDING PRE-EXAMINATION SEARCH
(INCLUDING DISCUSSION OF REFERENCES)**

Commissioner for Patents
PO Box 1450
Alexandria, Virginia 22313-1450

Sir:

Applicant submits this paper in support of the accompanying Petition to Make Special Under 37 C.F.R. § 1.102. That petition is also submitted pursuant to M.P.E.P. § 708.02(VIII) ("SPECIAL EXAMINING PROCEDURE FOR CERTAIN NEW APPLICATIONS - ACCELERATED EXAMINATION").

This paper provides the Statement Regarding Pre-Examination Search and Discussion of References that is referenced in M.P.E.P. § 708.02(VIII).

Statement Regarding Pre-Examination Search

The requirement for a pre-examination search for the subject application is satisfied by a search conducted on the EAST system of the U.S. Patent and Trademark Office (USPTO), and various supplemental searches, described below.

The search was conducted through the issued patents and published applications maintained at the USPTO in the following art areas: Class 705; Subclasses 1, 28, 35 and 37. In addition, the search included a computerized keyword search through the full text of all U.S. patents and published applications issued since 1971, and through the abstracts of European and Japanese patents and applications published since 1980. Also, a search of non-patent literature was conducted through the collections maintained at the USPTO in the above listed subclasses (if the files were still maintained). Also, searching was conducted via various Internet search engines and in various databases, such as Dialog and Factiva. In addition to the having these searches conducted, the applicant conducted Internet and legal searches that revealed additional references described below.

The results of the aforementioned searches have been cited in the Information Disclosure Statement (IDS) filed herewith. In accordance with M.P.E.P. § 708.02(VIII), copies of those references have been provided.

Applicant respectfully submits that these references do not anticipate or render obvious the claimed invention. As required by M.P.E.P. § 708.02(VIII), a discussion of the most pertinent references follows.

Discussion of Claims

The present application was filed with claims 1-20. Claims 21-81 were added in a Preliminary Amendment filed herewith, and claims 18 and 19 were cancelled. For the Examiner's convenience, a copy of the independent claims as presently submitted is attached hereto as Exhibit A.

The present invention is directed to methods and systems by which a real estate agent obtains a real estate listing to sell a property. Of the claims pending after entry of the Preliminary Amendment filed herewith, claims 1, 20, 22, 28, 34, 45, 51, 58 and 69 are independent. Each of these claims is directed to the real estate agent receiving from the seller the listing of the property in return for consideration. Claims 22, 28, 45 and 51 further provide that the consideration is in the form of "up-front" consideration, prior to sale of the property.

Claims 1 and 28 further specify that the agent receives "return consideration" or a "refund" from the seller if a sale condition, such as sale of the property or signing of a purchase/sale contract for the property, is met. As described in the present application, in one embodiment, if the agent sells the property, the seller returns the up-front payment previously made to the seller.

On the other hand, if the sale condition is not met, the seller is allowed to retain the consideration provided in return for the listing. Claims 22, 28, 34, 45 and 51 explicitly provide for this.

In certain embodiments, providing consideration to the seller in return for the listing is one of multiple options for obtaining a listing. As defined by claim 20, the seller is offered at least two arrangements: "a first arrangement wherein the real estate agent obtains the listing for the property and an opportunity to receive a first commission; and . . . a second arrangement wherein the real estate agent obtains the listing for the property and an opportunity to receive a second commission, the second commission being greater than the first commission, and wherein the seller receives consideration for providing the listing, the consideration not being included in the first arrangement." Thus, in the second arrangement, "the seller receives consideration for providing the listing," which a real estate agent can use to provide business

justification for “the second commission being greater than the first commission.” See specification at page 5 (substitute specification paragraph 013). Claims 34, 58 and 69 similarly provide for two arrangements, one with consideration in return for the listing and one without it.

Discussion Of References

This discussion of references will first address patents, then applications, and then other, non-patent references. The references are discussed in their order of publication.

U.S. Pat. No. 6,615,187 issued to Ashenmil et al. (“Ashenmil”)

Ashenmil is directed to a method of creating, purchasing and selling real estate brokerage commissions. The specification recounts that the securitization of assets, such as real estate mortgages, has lead to numerous statistically-predictable cash flows. This, in turn, enables investors to invest in securities with a calculated risk/reward profile. Ashenmil extends the concept of securitization to real estate brokerage commissions by describing a method of securitizing the real estate brokerage commissions that are collected upon the sale of property, as well as a method for trading securities derived from these commissions through the creation of a related futures and options market.

More specifically, Ashenmil describes a method wherein an investor purchases from a real estate owner, or potential owner, an assignable right to be the owner’s selling agent when the owner decides to sell the property. In one embodiment, a potential owner sells this right in order to get cash to help defray the costs of purchasing the property. This right is in essence an encumbrance on the property. It is a contract with a condition precedent (namely, the owner actually selling the property) that may never be satisfied. However, by pooling many of

these rights, an investor can price them using historical data, then sell instruments on a futures or options market.

Ashenmil fails to teach or suggest the claimed invention of the present application. In contrast to the present claims, Ashenmil does not deal with a seller or a listing, but rather deals only with owners of homes prior to such owners becoming sellers. More specifically, the investor in Ashenmil is merely buying an option to become the property owner's agent should the owner decide to sell the property, not a current right to list the property, as in all independent claims. If the property owner never decides to sell, the agent never receives the listing. Thus, there is no real estate listing "in return for providing consideration to the seller," as in all independent claims.

Furthermore, the option does not address the agent's success (or failure) in selling the property. In other words, Ashenmil does not use "a sale condition" as a basis for determining payments. As such, Ashenmil also fails to teach or suggest the possibility of the agent "receiving return consideration from the seller if a sale condition for the property is met," as claimed in claim 1, or "receiving a refund of at least a portion of the consideration ...if a sale condition is met," as claimed in claim 28.

Additionally, independent Claims 22, 28, 34, 45 and 51 contemplate the agent's success in selling the property, by reciting the limitation "allowing the seller to retain" or "the seller retaining"... "at least a portion of the ...consideration if a ...sale condition is not met." Ashenmil fails to teach or suggest determining whether to allow the seller to retain consideration based on a sale condition.

Also, Ashenmil does not teach or suggest a real estate agent offering two separate arrangements to a seller in order to gain the seller's listing, as claimed in independent Claims 20,

34, 58 and 69, particularly where one agreement includes consideration to the seller in return for a listing coupled with a greater commission than with an arrangement without the consideration.

Accordingly, Ashenmil neither anticipates nor renders obvious the present invention.

U.S. Pat. Appl. No. 2002/0072930 applied for by Scites ("Scites")

Scites is directed to a system and method for encouraging buyers and sellers of real estate to submit requests for real estate referrals to a real estate management system. The specification describes the existing practice of licensed real estate brokers referring business to other brokers for a referral fee. A client (either a seller or buyer) contacts a broker, who in turn refers the client to another broker. If the second broker is successful in buying or selling property for the client, the first broker typically receives a referral fee of about 20%.

In general, Scites is directed to a real estate management system that engages in the business of referrals and subsequently gives a portion of referral fees to charity. More specifically, the management system is comprised of licensed real estate brokers that only engage in referring customers; they do not engage in actually selling or buying property. The customer contacts this organization knowing that a portion of the proceeds will go to the charity of his choice. Once the organization receives its referral fee, the customer's chosen charity then receives a portion of the fee.

Scites neither anticipates nor renders obvious the claimed invention. Each independent claim recites consideration paid in return for the listing. In Scites, the seller receives no consideration.

Independent claims 1 and 28 recite methods for a real estate agent to obtain a listing of property from a seller, which comprises “providing consideration to the seller” and “receiving return consideration from the seller if a sale condition is met” (claim 1) or “receiving a refund of at least a portion of the consideration from the seller if a sale condition is met” (claim 28). This evidences an exchange between sellers and agents, which is neither taught nor suggested by Scites because Scites deals with referral fees, which are exchanges between agents.

Additionally, independent Claims 22, 28, 34, 45, and 51 recite methods for real estate agents to obtain listings of properties limited by “allowing the seller to retain” or “the seller retaining”... “at least a portion of the ...consideration if a ...sale condition is not met.” Scites fails to teach or suggest this limitation because it deals with referral fees, which are fees that agents pay other agents, not consideration exchanges between sellers and agents.

Further, independent claims 22, 28, 45 and 51 contain the limitation of “up-front” consideration, which further evidences exchanges between sellers and agents, which Scites fails to teach or suggest.

Also, Scites does not teach or suggest a real estate agent offering two separate arrangements to a seller in order to gain the seller’s listing, as claimed in independent Claims 20, 34, 58 and 69, particularly one where consideration to the seller in return for a listing is coupled with a greater commission.

U.S. Pat. Appl. No. 2002/0077893 applied for by Wolf et al. (“Wolf”)

Wolf is directed to a method and apparatus for a network system that generates real estate commission revenues and processes self-service rebate coupons for principals in real

estate transactions without a licensed real estate broker being physically present. The specification recounts the prior art systems, such as erealty.com, that teach a network system (such as the internet) wherein sellers list properties and buyers search for properties that meet their criteria. Wolf suggests that all the prior art systems require a realtor to accompany the prospective buyer to the properties that they have chosen.

In general, Wolf describes a system that links buyers and sellers via a network without a broker being physically present during the initial visit to the subject property. Sellers pay a fee to list their properties on a network. Buyers then search the properties and are able to download coupons for the properties that they wish to visit. The buyers then visit the properties by themselves, and present the coupon to the sellers if they wish to purchase the property. The host system then receives the brokerage fee minus the coupon price. The host system also allows for broker involvement after the buyer's initial visit.

The claimed invention of the present application is patentable over Wolf. The claimed invention is directed towards a relationship between the seller and the real estate agent, not between the seller and buyer, as in Wolf. This is recited by the limitations, in all independent claims, of the seller receiving consideration and the real estate agent receiving from the seller the real estate listing in return for the consideration. Wolf does not teach or suggest these limitations because Wolf is directed towards a completely different relationship; namely, between the seller and buyer.

Additionally, Wolf fails to teach or suggest a system or method comprising "receiving return consideration from the seller if a sale condition is met," as in claim 1 or receiving a "refund" if a sale condition is met, as in claim 28. As noted above, an exemplary sale condition is the sale of the property of execution of a purchase contract. In Wolf, there cannot be

a refund or any return consideration from the seller because Wolf teaches only a relationship between a seller and buyer, not a seller and a real estate agent.

Furthermore, claims 22, 28, 45 and 51 explicitly recite providing up-front consideration, and claims 22, 28, 34, 45 and 51 explicitly recite allowing the seller to retain consideration. Wolf fails to teach the limitation of providing the seller consideration as Wolf describes the seller initially providing consideration to the host system; thus, no consideration goes to the seller for an listing. In short, Wolf does not teach the exclusivity that is present in the independent claims of the present application and therefore, does not anticipate or render obvious the claimed invention.

Also, Wolf does not teach or suggest a real estate agent offering two separate arrangements to a seller in order to gain the seller's listing, as claimed in independent Claims 20, 34, 58 and 69, particularly where one agreement includes consideration to the seller in return for a listing coupled with a greater commission than with an arrangement without the consideration.

U.S. Appl. No. 2003/0144943 applied for by Zivan ("Zivan")

Zivan is directed to a method and process that enables a buyer or seller of property to defer broker's fees until after closing. Specifically, either the broker, another entity owned by the broker, or a separate financing entity finances the commission or fee. The seller or buyer, in return, agrees to pay the commission or fee at a later date, either by installments or by lump sum.

The presently claimed invention is patentable over Zivan. Specifically, all independent claims in the claimed invention recite a listing in return for actual consideration.

Simply put, Zivan does not teach providing consideration for a listing, as the only consideration received by the buyer/seller is the right to defer costs.

Further, with regard to claims 1 and 28, Zivan does not teach the agent receiving “return consideration” or a “refund” upon meeting a sale condition, or, as in claims 22, 28, 34, 45 and 51, the seller retaining at least a portion of the consideration if a sale condition is not met, as no consideration flows from the seller to the agent.

Additionally, because the seller in Zivan does not even receive consideration for a real estate listing, as is the case in all the independent claims of the present invention, Zivan cannot teach or suggest the further limitation of the consideration being “up-front,” as recited in claims 22, 28, 45 and 51.

Also, Zivan does not teach or suggest a real estate agent offering two separate arrangements to a seller in order to gain the seller’s listing, as claimed in independent Claims 20, 34, 58 and 69, particularly where one agreement includes consideration to the seller in return for an listing coupled with a greater commission than with an arrangement without the consideration.

225 ILL. COMP. STAT. 454/10-15 (c) – (d)

Illinois statute 225 ILCS 454/10-15 (c) – (d), which is part of the Illinois Real Estate License Act of 2000, reads:

(c) A licensee may offer compensation, including prizes, merchandise, services, rebates, discounts, or other consideration to an unlicensed person who is a party to a contract to buy or sell real estate or is a party to a contract for the lease of real estate, so long as the offer complies with the provisions of subdivision (26) of subsection (h) of Section 20-20 of this Act.

(d) A licensee may offer cash, gifts, prizes, awards, coupons, merchandise, rebates or chances to win a game of chance, if not prohibited by any other law or statute, to a consumer as an inducement to that consumer to use the services of the licensee even if the licensee and consumer do not ultimately enter into a broker-client relationship so long as the offer complies with the provisions of subdivision (26) of subsection (h) of Section 20-20 of this Act.

This statute is directed, in part, towards real estate agents, termed “licensees,” offering compensation to a party to a contract to buy or sell real estate and towards real estate agents offering compensation to consumers in order to induce the consumer to use the services of the real estate agent. As an initial matter, the statute fails to teach or suggest a real estate agent providing consideration to a seller in return for a listing, as recited in all independent claims. Indeed, the statute teaches away from this limitation of the claimed invention because it contemplates enforcement “even if the licensee and consumer do not ultimately enter into a broker-client relationship.” There can be no consideration in return for a listing if no relationship ever exists.

Furthermore, the statute does not even suggest the real estate agent “receiving return consideration from the seller if a sale condition for the property is met,” as in claim 1, or receiving a “refund” from the seller if a sale condition is met, as in claim 28.

Additionally, the limitation of “allowing the seller to retain at least a portion of the consideration if the sale condition is not met,” recited in claims 22, 28, 34, 45, and 51, cannot be taught or suggested by the statute because the statute never even contemplates the occurrence of a sale condition at all.

Also, this statute does not teach or suggest a real estate agent offering two separate arrangements to a seller in order to gain the seller’s listing, as claimed in independent Claims 20, 34, 58 and 69, particularly where one agreement includes consideration to the seller

in return for a listing coupled with a greater commission than with an arrangement without the consideration.

N.Y. Real Prop. Law § 442

New York statute N.Y. Real Prop. Law § 442, which is part of the New York Real Property Laws, reads, in part:

No real estate broker shall pay any part of a fee, commission or other compensation received by the broker to any person for any service, help or aid rendered in any place in which this article is applicable, by such person to the broker in buying, selling, exchanging, leasing, renting or negotiating a loan upon any real estate including the resale of a condominium unless such a person be a duly licensed real estate salesman regularly associated with such broker or a duly licensed real estate broker or a person regularly engaged in the real estate brokerage business in a state outside of New York.

...

Except when permitted pursuant to the foregoing provisions of this section no real estate broker shall pay or agree to pay any part of a fee, commission, or other compensation received by the broker, or due, or to become due to the broker to any person, firm or corporation who or which is or is to be a party to the transaction in which such fee, commission or other compensation shall be or become due to the broker.

This statute describes, and prohibits, the practice of real estate brokers sharing their commissions (or any like fee that is due or will become due to the broker) with parties to the real estate transaction or to any other person that renders aid to the broker in a real estate transaction. However, the presently claimed invention does not involve the sharing of commissions at all.

Additionally, there is a temporal distinction between the claimed system and systems that are contemplated by the statute which indicates that the statute is in fact addressing different transactions than the claimed invention. All independent claims in the present invention

recite providing consideration to the seller in return for receiving the listing. Consideration in return for a listing cannot be taught or suggested by this statute because the statute contemplates the sharing of commissions, which are not attained until the property is sold. Thus, the statute addresses a different real estate transaction than one wherein a real estate agent obtains a real estate listing from a seller wherein consideration is provided to the seller in return for receiving the real estate listing.

Further, because this statute only contemplates the sharing of commissions, it cannot teach or suggest the limitation of the consideration being “up-front,” as in claims 22, 28, 45 and 51. There can be no “up-front” consideration because, as understood in the art, commissions are only attained once the property is sold, at the conclusion of the listing, not “up-front.”

Also, according to claim 1, if a sale condition is met, the real estate broker receives “return consideration from the seller;” or, according to claim 28, a “refund.” In contrast, the statute prohibits the broker sharing his commission. As recited in claims 22, 28, 34, 45 and 51, if a sale condition is not met, “the seller retains at least at least a portion of the consideration.” This consideration cannot be a shared commission because without the sale of the property, there is no commission to be shared. Thus, this statute teaches away from the claimed invention as presently claimed and neither anticipates nor renders the claims obvious.

Also, this statute does not teach or suggest a real estate agent offering two separate arrangements to a seller in order to gain the seller’s listing, as claimed in independent Claims 20, 34, 58 and 69, particularly where one agreement includes consideration to the seller in return for a listing coupled with a greater commission than with an arrangement without the consideration.

**Coldwell Banker Residential Real Estate Services, Inc. v. New Jersey Real Estate Comm'n,
242 N.J.Super. 354 (N.J. Super. Ct. App. Div. 1990) ("Coldwell Banker")**

In Coldwell Banker, a real estate broker, wholly owned by Sears Roebuck, sought to institute a program of providing discount coupons for Sears merchandise to sellers who list their homes with the broker and to buyers who purchase homes through the broker. The coupons were given to the sellers upon their listing with the broker. The New Jersey Superior Court Appellate Division agreed with the Real Estate Commission's ruling that this practice violated New Jersey statute N.J.S.A. 45:15-17g, which, in part, prohibits:

Using any plan, scheme or method for the sale or promotion of the sale of real estate which involves a lottery, a contest, a game, a prize, a drawing, or the offering of a lot or parcel or lots or parcels for advertising purposes....

Thus, although Coldwell Banker discusses providing consideration to the seller, it fails to teach the real estate broker "receiving return consideration from the seller if a sale condition for the property is met," as in claim 1 or a "refund" as in claim 28. In fact, Coldwell Banker teaches away from this limitation because the program "does not depend on the consummation of the purchase." Coldwell Banker on page 2 of the attached copy, page 357 as cited. Thus, Coldwell Banker specifically forecloses the possibility of a "refund" or "return consideration." In Coldwell Banker, the seller never provides return consideration to the agent, whether or not a sale condition is met.

Similarly, Coldwell Banker does not teach or suggest "allowing the seller to retain at least a portion of the consideration if the sale condition is not met," as in claims 22, 28, 34, 45 and 51. Simply put, Coldwell Banker does not teach or suggest the notion of a sale condition because in Coldwell Banker the consumer keeps the consideration in every case, without regard

to any proceeding events. Indeed, there is no discussion of a sale condition at all. Thus, the claimed invention is patentably distinct over Coldwell Banker.

Also, Coldwell Banker does not teach or suggest a real estate agent offering two separate arrangements to a seller in order to gain the seller's listing, as claimed in independent Claims 20, 34, 58 and 69, particularly where one agreement includes consideration to the seller in return for a listing coupled with a greater commission than with an arrangement without the consideration.

Code of Ethics and Standards of Practice of the National Association of Realtors®

Article 12, Standard of Practice 12-3 of the Code of Ethics and Standards of Practice of the National Association of Realtors® ("the Code") reads:

The offering of premiums, prizes, merchandise discounts or other inducements to list, sell, purchase, or lease is not, in itself, unethical even if receipt of the benefit is contingent on listing, selling, purchasing, or leasing through the Realtor® making the offer. However, Realtors® must exercise care and candor in any such advertising or other public or private representations so that any party interested in receiving or otherwise benefiting from the Realtor®'s offer will have clear, thorough, advance understanding of all the terms and conditions of the offer. The offering of any inducements to do business is subject to the limitations and restrictions of state law and the ethical obligations established by any applicable Standard of Practice.

The Code describes offering premiums, prizes, merchandise discounts or other inducements to list property. However, the Code fails to teach or suggest the real estate broker "receiving return consideration from the seller if a sale condition for the property is met," as in Claim 1 or a "refund" as in Claim 28. Similarly, the Code fails to teach or suggest "allowing the seller to retain at least a portion of the consideration if the sale condition is not met," as in Claims 22, 28, 34, 45 and 51. In fact, the Code does not teach or suggest any sale condition at all, as there is no mention or suggestion of the premiums, prizes, discounts, or other inducements

being “retained” upon the non-occurrence of any event (as in Claims 22, 28, 34, 45 and 51) or being “refunded” upon the occurrence of an event (as in Claim 28) or the real estate broker receiving anything in “return” upon the occurrence of an event (as in Claim 1).

Moreover, there is no temporal element in the Code, as in Claims 22, 28, 45 and 51, which are limited to providing “up-front” consideration to the seller. Indeed, providing consideration prior to expiration of the listing or the sale of property provides a significant business advantage over providing consideration at the expiration of the listing.

Also, there is nothing in the Code that teaches or suggests offering two separate arrangements to a seller in order to gain the seller’s listing, as claimed in independent Claims 20, 34, 58 and 69, particularly where one agreement includes consideration to the seller in return for an listing coupled with a greater commission than with an arrangement without the consideration.

www.dallasnorthproperties.net/seller_guarantee.htm (“Dallas North Properties”)

Dallas North Properties describes an arrangement between the seller and the real estate agent wherein the real estate agent lists the property for sixty (60) days, and if the agent cannot sell the property within this first sixty days, the agent is able to list the property for an additional sixty days. The agent agrees to pay the seller one-thousand dollars upon the sale of the property.

As an initial matter, it is unclear whether Dallas North Properties, or the method described therein, constitutes prior art. Accordingly, the Examiner is invited to independently determine the relevance of the reference. Dallas North Properties, even if it were prior art, does not anticipate or render obvious the claimed invention. The claimed invention comprises

providing consideration to the seller, and more specifically, the real estate agent receiving the *listing* “in return for providing the consideration to the seller,” as evidenced in claims 1, 20, 22, 28, 34, 45, 51, 58 and 69. Indeed, in claims 22, 28, 45 and 51, such consideration is “up-front,” prior to the sale of the property. In contrast, in Dallas North Properties, the seller receives consideration upon the *sale* of the property.

Additionally, as recited in claims 1 and 28, if a sale condition is met, the real estate agent receives “return consideration” or a “refund” from the seller. This, of course, can neither be taught nor suggested by Dallas North Properties because if the seller ever receives consideration, it is at the time of the sale, and thus the real estate agent can never receive return consideration nor a refund from the seller.

Furthermore, as recited in claims 22, 28, 34, 45 and 51, the seller may retain at least a portion of the consideration if the sale condition is *not met*, which is directly opposed to Dallas North Properties, wherein the seller retains the consideration if the property is actually sold. In this regard, Dallas North Properties actually teaches away from the present invention.

Also, Dallas North Properties does not teach or suggest a real estate agent offering two separate arrangements to a seller in order to gain the seller’s listing, as claimed in independent Claims 20, 34, 58 and 69, particularly where one consideration to the seller in return for an listing is coupled with a greater commission.

www.hekselhomes.com (“Heksel Homes”)

Heksel Homes describes a system wherein the real estate agent pays the seller a cash sum if the agent does not sell the home within sixty (60) days. As an initial matter, it is

unclear whether Heksel Homes, or the method described therein, constitutes prior art. Even if Heksel Homes was prior art, it would not anticipate or render obvious the claimed invention.

The claimed invention involves “providing consideration to the seller” “in return for” “receiving...the real estate listing...,” as described in all independent claims: claims 1, 20, 22, 28, 34, 45, 51, 58 and 69. Heksel Homes describes only providing consideration to the seller if the home is not sold, not for receiving the listing as claimed.

Additionally, as in claims 1 and 28, if a sale condition is met, the real estate agent receives “return consideration” or a “refund,” respectively, from the seller. This is neither taught nor suggested by Atvantage because if the seller ever receives consideration, it is after twenty-seven days have expired without a sale occurring. There is nothing to suggest an additional transaction (e.g., a return to the agent) taking place if a sale condition is met.

Furthermore, as in claims 22, 28, 34, 45 and 51, the seller receives consideration for the listing and also may retain at least a portion of the consideration if the sale condition is not met. For example, if the agent does not sell the home (an exemplary sale condition), the seller retains the consideration originally paid for the listing. Heksel Homes, in contrast, describes the seller *initially* receiving consideration if a sale is not made. Because the seller receives the consideration initially if the sale is not made, there is no notion of retaining consideration that has already been given.

Also, Heksel Homes does not teach or suggest a real estate agent offering two separate arrangements to a seller in order to gain the seller’s listing, as claimed in independent Claims 20, 34, 58 and 69, particularly where one agreement includes consideration to the seller in return for a listing coupled with a greater commission than with an arrangement without the consideration.

www.realestatelibrary.com/sellhome.html; www.realestatelibrary.com/guarantees.html
("Real Estate Library")

Real Estate Library describes a system wherein the real estate agent pays the seller a cash amount if the agent cannot sell the property within sixty (60) days. Additionally, the cash is paid without regard to whether the house is ever sold.

As an initial matter, it is unclear whether Real Estate Library, or the method described therein, constitutes prior art. Like the other systems described herein, even if this were prior art, it would not anticipate or render obvious the claimed invention. The claimed invention involves "providing consideration to the seller" "in return for" "receiving...the real estate listing..." as in claims 1, 20, 22, 28, 34, 45, 51, 58 and 69, which are all the independent claims. Real Estate Library describes only providing consideration to the seller if the home is not sold during the first sixty days, not for receiving the listings as claimed.

Additionally, as in claims 1 and 28, if a sale condition is met, the real estate agent receives "return consideration" or a "refund" from the seller. In Real Estate Library the seller receives consideration, after the expiration of sixty days, without regard to whether the home is ever sold. Thus, Real Estate Library specifically teaches away from the agent ever receiving "return consideration" or a "refund."

Furthermore, the seller may retain at least a portion of the consideration if the sale condition is not met, as in claims 22, 28, 34, 45 and 51. Real Estate Library never describes such a limitation because no consideration is actually provided to the seller unless and until the property is not sold within sixty days.

Also, this Real Estate Library does not teach or suggest a real estate agent offering two separate arrangements to a seller in order to gain the seller's listing, as claimed in

independent Claims 20, 34, 58 and 69, particularly where one agreement includes consideration to the seller in return for a listing coupled with a greater commission than with an arrangement without the consideration.

www.atvantage.com/realestate/or_else.asp ("Atvantage")

Like the other systems described herein, the Atvantage system describes an arrangement wherein the real estate agent pays a cash sum to the seller if the agent does not sell the property during a specified time period. And, like the other systems, it is unclear whether Atvantage, or the method described therein, constitutes prior art. In any event, Atvantage, even if it were prior art, would not anticipate or render obvious the claimed invention.

Claims 1, 20, 22, 28, 34, 45, 51, 58 and 69, which are all the independent claims, involve "providing consideration to the seller" "in return for" "receiving...the real estate listing...." Atvantage describes only providing consideration to the seller if the home is not sold during the first twenty-seven (27) days, not for receiving the listing as claimed.

Additionally, as in claims 1 and 28, if a sale condition is met, the real estate agent receives "return consideration" or a "refund" from the seller. This is neither taught nor suggested by Atvantage because it never mentions consideration going back to the agent. Indeed, nothing in Atvantage suggests an additional transfer taking place if a sale condition *is* met.

Furthermore, as in claims 22, 28, 34, 45 and 51, the seller may *retain* at least a portion of the consideration if the sale condition is not met. Atvantage never describes these limitations because no consideration is actually provided to the seller unless and until the property is not sold within twenty-seven days.

Also, Atvantage does not teach or suggest a real estate agent offering two separate arrangements to a seller in order to gain the seller's listing, as claimed in independent Claims 20, 34, 58 and 69, particularly where one agreement includes consideration to the seller in return for a listing coupled with a greater commission than with an arrangement without the consideration.

LendingTree.Com – Find a Realtor® Service
(<http://www.lendingtree.com/stm/offers/realty.asp?realtysource=RC01LT04&partner=&source=&siteid=>) (“Lending Tree”)

Applicant initially notes that it is unclear if this reference, or the method and system discussed therein, is prior art because the date of the reference is not known. Accordingly, the Examiner is invited to independently determine the relevance of this reference. Regardless, the present invention is distinguishable over LendingTree.

LendingTree describes a system wherein sellers and buyers (“consumers”) are referred to real estate agents through LendingTree.Com’s website. Thereafter, if a consumer closes the real estate transaction through the real estate agent referred by LendingTree.Com, the consumer is entitled to a Home Depot® or an American Express® gift card, which is valued according to the sale price of the property.

The claimed invention is patentably distinct over LendingTree. LendingTree describes providing consideration to the seller, but not receiving a sales listing in return for providing the consideration to the seller, as recited in all independent claims. In fact, consideration is only paid to the seller once the real estate transaction is complete. Thus, LendingTree amounts to consideration to be paid to the seller only if the *sale* of the property occurs. However, the independent claims of the present invention teach a method of obtaining a real estate *listing*, wherein “providing consideration to the seller” occurs in every case, whether

or not a sale occurs. Moreover, in claims 22, 28, 45 and 51, the consideration is explicitly an up-front payment, prior to sale of the property, in direct contrast to LendingTree, which is specifically directed towards payment upon sale.

Also, LendingTree does not teach or suggest the limitation of receiving “return consideration” or a “refund” from the seller, as in claims 1 and 28, respectively. In fact, the consideration in LendingTree are coupons received after the sale of the property, thereby eliminating the possibility of the agent receiving anything in return.

Furthermore, because the gift card is provided at the sale of the property, the consumer does not retain any consideration if a sale condition is not met, as recited in claims 22, 28, 34, 45 and 51. Accordingly, LendingTree fails to teach or suggest these claimed limitations.

Also, LendingTree does not teach or suggest a real estate agent offering two separate arrangements to a seller in order to gain the seller’s listing, as claimed in independent Claims 20, 34, 58 and 69, particularly where one agreement includes consideration to the seller in return for a listing coupled with a greater commission than with an arrangement without the consideration.

CONCLUSION

Applicant respectfully submits that the claimed invention patentably distinguishes over the references discussed above. None of the references describe providing consideration in return for the listing (as claimed in all claims), providing up-front consideration to the seller (as claimed in claims 22, 28, 45 and 51 and claims that depend therefrom), receiving return consideration or a refund from the seller if a sale condition is met (as claimed in claims 1 and 28 and claims that depend therefrom), allowing the seller to retain at least a portion of the consideration if a sale condition is not met (as claimed in claims 22, 28, 34, 45 and 51 and claims that depend therefrom) or offering at least two arrangements to obtain a real estate listing (as claimed in claims 20, 34, 58 and 69 and claims that depend therefrom). Further, because the references neither teach nor suggest claim limitations, the references, both alone and in combination, fail to render the claimed invention obvious.

Consequently, favorable consideration and prompt allowance of the subject application is earnestly solicited.

Respectfully submitted,



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Exhibit A

1. A method for a real estate agent to obtain a real estate listing for a property of a seller, the method comprising:

providing consideration to the seller;

receiving from the seller the real estate listing of the property in return for providing the consideration to the seller; and

receiving return consideration from the seller if a sale condition for the property is met.

20. A method of a real estate agent to obtain a real estate listing for a property of a seller, the method comprising:

offering the seller a first arrangement wherein the real estate agent obtains the listing for the property and an opportunity to receive a first commission; and

offering the seller a second arrangement wherein the real estate agent obtains the listing for the property and an opportunity to receive a second commission, the second commission being greater than the first commission, and wherein the seller receives consideration for providing the listing, the consideration not being included in the first arrangement.

22. A method for a real estate agent to obtain a real estate listing for a property of a seller, the method comprising:

providing up-front consideration to the seller;

receiving from the seller the real estate listing of the property in return for the up-front consideration; and

allowing the seller to retain at least a portion of the consideration if a sale condition is not met.

28. A method for a real estate agent to obtain a real estate listing for a property of a seller, the method comprising:

providing up-front consideration to the seller;

receiving from the seller the real estate listing of the property in return for the up-front consideration;

receiving a refund of at least a portion of the consideration from the seller if a sale condition is met; and

allowing the seller to retain at least a portion of the consideration if the sale condition is not met.

34. A method of a real estate agent to obtain a real estate listing for a property of a seller, the method comprising:

offering a seller a first arrangement wherein the real estate agent obtains the listing for the property of the seller and receives a first commission from the seller if a first sale condition is met; and

offering the seller a second arrangement wherein the real estate agent obtains the listing for the property and receives a second commission if a second sale condition is met, and wherein the seller receives consideration in return for the listing, the consideration not being included in the first arrangement, and wherein the seller keeps at least a portion of the consideration if the second sale condition is not met.

45. A method for a real estate agent to obtain a real estate listing for a property of a seller, the method comprising the steps of:

determining up-front consideration to be given to the seller;

receiving from the seller the real estate listing of the property in return for the up-front consideration;

determining whether the seller is allowed to retain at least a portion of the consideration, the determination being based on whether a sale condition is met; and

wherein at least a part of one of the steps utilizes a computer.

51. A system for tracking seller contracts, each contract providing for a real estate agent to receive a listing for a property of a seller in return for the seller receiving up-front consideration for the listing, the seller retaining at least a portion of the up-front consideration if a sale condition is not met during a time period, the system comprising:

one or more processors coupled to electronic storage, the processors programmed to:

associate with each seller contract an indication of the up-front consideration to the seller and an indication of the time period; and

track expiration of the time period, thereby enabling a determination of whether the seller retains at least a portion of the up-front consideration.

58. A method for a real estate agent to obtain a real estate listing for a property of a seller, the method comprising the steps of:

offering the seller a first arrangement wherein the real estate agent obtains the listing for the property and an opportunity to receive a first commission;

offering the seller a second arrangement wherein the real estate agent obtains the listing for the property and an opportunity to receive a second commission, and wherein the seller receives consideration in return for providing the second listing, the consideration not being included in the first arrangement; and

determining the commission and consideration based on an arrangement selected by the seller;

wherein at least a part of one of the steps utilizes a processor.

69. A system for tracking at least two arrangements for a real estate agent to obtain real estate listings for properties of sellers, the system comprising:

one or more processors coupled to electronic storage, the processors programmed to:

associate either a first arrangement or a second arrangement with a seller, wherein the first arrangement comprises the real estate agent obtaining the listing for a property and an opportunity to receive a first commission, and wherein the second arrangement comprises the real estate agent obtaining the listing for the property and an opportunity to receive a second commission, the second commission being greater than the first commission, and the seller receiving consideration in return for providing the second listing, the consideration not being included in the first arrangement; and

associate arrangements with commissions and consideration, if any, thereunder.